

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ANA HER,	)	Case No.: 1:20-cv-1528 JLT BAM
)	
Plaintiff,	)	ORDER ADOPTING FINDINGS AND
	)	RECOMMENDATIONS, DENYING
v.	)	PLAINTIFF'S APPEAL AND REQUEST FOR
	)	REMAND, GRANTING DEFENDANT'S
FRANK BISIGNANO,	)	REQUEST TO AFFIRM THE
Commissioner of Social Security ¹,	)	ADMINISTRATIVE DECISION, AND
	)	DIRECTING ENTRY OF JUDGMENT IN
Defendant.	)	FAVOR OF DEFENDANT
)	
	)	(Docs. 18, 19, and 24)

Ana Her seeks judicial review of a final decision denying her applications for a period of disability, disability insurance benefits, and supplemental security income under Titles II and XVI of the Social Security Act. (Docs. 1, 18.) Plaintiff asserts the ALJ erred in evaluating the medical evidence, including the opinion of a non-examining physician and failing to find Plaintiff's posttraumatic stress disorder was a severe impairment. (Doc. 18 at 1, *see also* 7-13.) Plaintiff requests the matter be remanded for further administrative proceedings. (*Id.* at 12.) The Commissioner asserts the ALJ's evaluation of the evidence was proper and substantial evidence supports the ALJ's findings. (Doc. 19 at 4-19.) For the reasons set forth below, Plaintiff's appeal is denied and Commissioner's request to affirm the decision is granted.

¹ Frank Bisignano became the Commissioner of Social Security on May 6, 2025. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, the Court substitutes Leland Dudek as the defendant in this action.

1 **I. Decision of the ALJ**

2 The ALJ evaluated Plaintiff's application using the five-step sequential evaluation set forth in
3 20 C.F.R. §§ 404.1520, 416.920. (Doc. 12-2 at 21-29.) First, the ALJ determined Plaintiff did not
4 engage in substantial gainful activity after her alleged onset date of July 25, 2016. (*Id.* at 21.) Second,
5 the ALJ found Plaintiff's severe impairments included depression and hypertension. (*Id.*) The ALJ
6 noted Plaintiff "migraine headaches, stage two chronic kidney disease, urinary tract infection, ovarian
7 cysts, [and] insomnia," but found Plaintiff's these impairments were "nonsevere" because they "do not
8 cause more than a minimal limitation in her ability to perform basic work activities," whether
9 considered individually or in combination with Plaintiff's other impairments. (*Id.* at 22.)

10 At step three, the ALJ determined Plaintiff's impairments did not meet or medically equal a
11 Listing. (Doc. 12-2 at 22-23.) Next, the ALJ found:

12 [T]he claimant has the residual functional capacity to perform medium
13 work as defined in 20 CFR 404.1567(c) and 416.967(c) except she should
14 not work in environments exposing her to unprotected heights or
15 machinery with dangerous moving mechanical parts. She further should not
16 work in environments subjecting her to more than moderate levels of
background noise. In addition, the claimant is capable of performing jobs
of a non- complex nature requiring the performance of no more than
simple, routine tasks, but she is unable to perform jobs requiring oral or
written communication in the English language.

17 (*Id.* at 29.) With this residual functional capacity, the ALJ determined at step four that Plaintiff was
18 "capable of performing past relevant work as a hand packager[,] ... both as it was actually performed
19 and as it is generally performed in the national economy. (*Id.* at 28.) In addition, the ALJ found
20 Plaintiff could perform other work existing in significant numbers in the national economy, including
21 kitchen helper, crate liner, and box bender. (*Id.* at 28-29.) Therefore, the ALJ concluded Plaintiff was
22 not disabled. (*Id.* at 36.)

23 **II. Issues Raised by Plaintiff**

24 Plaintiff asserts that substantial evidence does not support the decision because the ALJ "failed
25 to offer specific, legitimate reasons for rejecting the opinion of L. Pancho, M.D.," an examining
26 physician who "opined Plaintiff is able to lift and carry 20 pounds occasionally and 10 pounds
27 frequently, stand and walk about six hours, and sit for about six hours total in an eight-hour workday."
28 (Doc. 18 at 7, 8 [emphasis omitted].) In addition, Plaintiff argues the "determination is unsupported by

1 substantial evidence because [the ALJ] failed to find Plaintiff’s posttraumatic stress disorder (PTSD)
2 was a severe impairment.” (*Id.* at 10 [emphasis omitted]; *see also id.* at 10-12.) Thus, Plaintiff
3 contends the Court should remand the matter for further administrative proceedings. (*Id.* at 12.)

4 **III. Findings and Recommendations**

5 The magistrate judge found that the ALJ identified specific, legitimate reasons for rejecting the
6 opinion of Dr. Pancho, because the opinion was inconsistent with other medical opinions, it was “over-
7 restrictive,” and it was inconsistent with Plaintiff’s conservative treatment and minor symptoms that
8 post-dated the opinion. (Doc. 24 at 6-8.) The magistrate judge rejected Plaintiff’s assertion that the
9 ALJ offered “his own interpretation of a select few clinical findings, to the ignorance of the record as a
10 whole.” (*Id.* at 7, quoting Doc. 18 at 9-10 [modification adopted].) The magistrate judge also noted
11 Plaintiff did not challenge the ALJ’s analysis concerning medical opinions that conflicted with Dr.
12 Pancho, or argue the opinions to which the ALJ gave greater weight—including the opinion of an
13 examining physician and another non-examining physician— were “unsupported by the record as a
14 whole.” (*Id.* at 8.) The magistrate judge also rejected Plaintiff’s argument that the ALJ “ignored the
15 fact that Dr. Pancho’s opinion is consistent with the Plaintiff’s function report, testimony and third-
16 party function report” was not compelling, because Plaintiff failed to acknowledge that the ALJ
17 discounted her testimony and gave “little weight to the third-party function report.” (*Id.* at 8-9 [cleaned
18 up].) Thus, the magistrate judge concluded that “[t]he ALJ did not err in evaluating the opinion of Dr.
19 Pancho.” (*Id.* at 4; *see also id.* at 9.)

20 The magistrate judge also found Plaintiff’s arguments regarding her mental impairments were
21 not persuasive. (Doc. 24 at 9-11.) The magistrate judge acknowledged that “the ALJ did not
22 specifically address [Plaintiff’s] PTSD diagnosis in the decision.” (*Id.* at 10.) However, the magistrate
23 judge found the ALJ considered “Plaintiff’s reported symptoms, her mental health treatment records,
24 and the findings of the state agency medical consultants, Drs. Celine Payne-Gair and Dr. Phaedra
25 Caruso- Radin,” who “reviewed evidence that specifically identified Plaintiff’s PTSD.” (*Id.*) The
26 magistrate judge observed “the ALJ ultimately credited the opinions of Drs. Payne-Gair and Caruso-
27 Radin and assigned them specific weight in developing the RFC.” (*Id.* at 11.) Because the ALJ
28 considered these opinions and any limitations imposed by the impairment to determine Plaintiff’s RFC,

1 the magistrate judge found “any failure to identify Plaintiff’s PTSD at step two [was] harmless.” (*Id.*)
 2 Moreover, the magistrate judge noted “Plaintiff has failed to identify any limitations resulting from her
 3 PTSD, or mental impairments as a whole, that are unaccounted for in the RFC.” (*Id.* at 12.) For this
 4 reason as well, the magistrate judge found any step two error was harmless. (*Id.*)

5 The magistrate judge concluded “the ALJ’s decision is supported by substantial evidence in the
 6 record as a whole and is based on proper legal standards.” (Doc. 24 at 12.) Therefore, the magistrate
 7 judge recommended the Court deny Plaintiff’s motion for summary judgment or remand, grant the
 8 request to affirm the agency’s determination, and enter judgment in favor of the Commissioner. (*Id.*)

9 **IV. Objections and Response**

10 Plaintiff contends the Court should reject the “finding that the ALJ did not err in evaluating the
 11 opinion of non-examining physician, Dr. Pancho....” (Doc. 26 at 2.) Plaintiff maintains the ALJ did
 12 not identify specific and legitimate reasons to reject the opinion of Dr. Pancho. (*Id.* at 2-6.) According
 13 to Plaintiff, the ALJ engaged in “cherry picking” in reviewing the record, and did not properly address
 14 additional physical findings in the medical record. (*Id.* at 3-4.) Plaintiff reiterates her argument that
 15 “the ALJ overlooked the consistency of these physical complaints with relevant portions of her hearing
 16 testimony, ... [and] her function reports, including:

17 failing to discuss citations to her hearing testimony including Plaintiff
 18 must sit while cooking and needs time to rest to finish cooking because
 19 she is tired and has no energy (AR 42, 44); that whenever Plaintiff walks
 20 or stands, she feels like she is going to faint and fall down (AR 45); that
 21 everyday Plaintiff experiences dizziness when standing up from a sitting
 22 or lying position; that even when Plaintiff remembers to take her
 medications, she can maybe stand for 3-10 minutes; that due to shrapnel
 in her knee received after serving in the military, Plaintiff feels pain
 everywhere when she stands (AR 46); and that Plaintiff constantly feels
 burning in her feet and cannot put pressure on her feet and cannot put
 shoes or socks on (AR 47).

23 (*Id.* at 5-6.) Plaintiff also argues that the magistrate judge erred in finding the treatment Plaintiff
 24 received was a specific, legitimate reason for rejecting Dr. Pancho’s opinion. (*Id.* at 6-7.) Therefore,
 25 Plaintiff contends the Court should remand the matter for an ALJ to consider the medical opinion
 26 evidence. (*Id.* at 7.)

27 The Commissioner filed a response to the objections, asserting the Court should adopt the
 28 Findings and Recommendations. (Doc. 27 at 1.) The Commissioner argues Plaintiff fails to show any

error by the magistrate judge, and that “the ALJ properly evaluated the medical opinions of record.” (*Id.* at 1, 2 [emphasis omitted].) The Commissioner contends the ALJ “reasonably afforded the greatest weight to the medical opinions from the consultative examiner (Dr. Wagner) and the State agency medical consultant on reconsideration (Dr. Laiken), which were supported by and consistent with the medical evidence and other evidence.” (*Id.* at 2.) The Commissioner asserts Plaintiff “simply reiterates the arguments that the magistrate judge rejected,” and “argues that the evidence should have been interpreted differently.” (*Id.*) However, the Commissioner notes that “under the substantial evidence standard, a reviewing court ‘must uphold the ALJ’s decision where the evidence is susceptible to more than one rational interpretation.’” (*Id.* at 3, quoting *Wischmann v. Kijakazi*, 68 F.4th 498, 504 (2023).) The Commissioner concludes the magistrate judge “appropriately concluded that Plaintiff’s arguments lacked merit,” and asserts the Court should affirm the final decision. (*Id.*)

V. Discussion

A district judge may “accept, reject or modify, in whole or in part, the findings and recommendations...” 28 U.S.C. § 636(b)(1). If a party files objections, “the court shall make a determination of those portions of the report or specified proposed finding or recommendations to which objection is made.” *Id.* A de novo review requires the Court to “consider[] the matter anew, as if no decision had been rendered.” *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009).

A. Step two determination

As an initial matter, Plaintiff did not make any objections to the findings of the magistrate judge regarding the step two determination and Plaintiff’s mental impairments. (*See generally* Doc. 26.) Towards that end, the Court is not required to perform a *de novo* review regarding this issue. *Thomas v. Arn*, 474 U.S. 140, 154 (1985) (Section 636(b) “does not require the judge to review an issue de novo if no objections are filed...”). Nevertheless, the Court reviewed the step two issue and concludes the findings are supported by the record and proper analysis. As the magistrate judge determined, any error at step two was harmless because the ALJ considered medical opinions that addressed Plaintiff’s PTSD and symptoms, and proceeded to consider the mental impairments to determine Plaintiff’s residual functional capacity. *See, e.g., Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir. 2007) (error at step two was harmless where the ALJ considered any limitations at later steps); *see also Rosas v. Comm’r of Soc.*

1 *Sec.*, 2016 WL 3562748, at *4 (E.D. Cal. June 29, 2016) (finding harmless error where “the ALJ failed
2 to mention” the plaintiff’s PTSD and major depressive disorder at step two, but performed “an in-depth
3 analysis” of her intellectual abilities at subsequent steps).

4 **B. Evaluation of a medical opinion**

5 Under the applicable regulations², courts distinguish the opinions of three categories of
6 physicians: (1) treating physicians; (2) examining physicians, who examine but do not treat the
7 claimant; and (3) non-examining physicians, who neither examine nor treat the claimant. *Lester v.*
8 *Chater*, 81 F.3d 821, 830 (9th Cir. 1996). In general, the opinion of a treating physician is afforded the
9 greatest weight. *Id.*; *see also Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). Further, an
10 examining physician’s opinion is given more weight than the opinion of a non-examining physician.
11 *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990); 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2).

12 An opinion is not binding upon the ALJ and may be discounted whether another physician
13 contradicts the opinion. *Magallanes*, 881 F.2d at 751. An ALJ may reject an *uncontradicted* opinion
14 of a treating or examining medical physician only by identifying a “clear and convincing” reason.
15 *Lester*, 81 F.3d at 831. In contrast, a *contradicted* opinion of a treating or examining physician may be
16 rejected for “specific and legitimate reasons that are supported by substantial evidence in the record.”
17 *Id.*, 81 F.3d at 830. When there is conflicting evidence, “it is the ALJ’s role ... to resolve the conflict.”
18 *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984). The Court must uphold the ALJ’s resolution of the
19 conflict when there is “more than one rational interpretation of the evidence.” *Id.*; *see also Matney v.*
20 *Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992) (“The trier of fact and not the reviewing court must
21 resolve conflicts in the evidence, and if the evidence can support either outcome, the court may not
22 substitute its judgment for that of the ALJ”).

23 1. Opinion of Dr. Pancho

24 As noted above, Plaintiff contends the ALJ erred in evaluating the opinion of Dr. Pancho, a
25 non-examining physician. (Doc. 18 at 1, 7-10.) Dr. Pancho reviewed available medical records and
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27 ² For applications filed on or after March 27, 2017, the Commissioner revised the rules for the evaluation of
28 medical evidence at the administrative level. *See Revisions to Rules Regarding the Evaluation of Medical
Evidence*, 2017 WL 168819, 82 Fed. Reg 5844-01 (Jan. 18, 2017). Because Plaintiff filed her applications for
benefits prior to that date, the Court applies the prior regulations.

1 found Plaintiff could perform work that required a “light RFC” on April 28, 2017. (Doc. 12-2 at 64-65,
 2 67-68.) Specifically, Dr. Pancho determined Plaintiff could lift and carry 20 pounds occasionally and
 3 10 pounds frequently; stand and/or walk “[a]bout 6 hours in an 8-hour workday;” and sit “[a]bout 6
 4 hours in an 8-hour workday.” (*Id.* at 67-68.) Dr. Pancho also opined Plaintiff did not have any
 5 postural, manipulative, visual, communicative, or environmental limitations. (*Id.* at 69.)

6 The opinion of Dr. Pancho was contradicted by the opinions of Drs. Wagner and Laiken, who
 7 each determined Plaintiff could perform medium work, including lifting and carrying up to 50 pounds
 8 occasionally and 25 pounds frequently. (*See* Doc. 12-2 at 25; *see also id.* at 98-99, 113-14, 589-90.)
 9 Consequently, the ALJ was required to identify specific and legitimate reasons to reject the limitations
 10 identified by Dr. Pancho. *Lester*, 81 F.3d at 830-31.

11 2. The ALJ’s analysis

12 Addressing the medical opinions, the ALJ indicated that he gave “very little weight” to the
 13 opinion of Dr. Pancho. (Doc. 12-2 at 25.) The ALJ found the opinion was “inconsistent with and
 14 unsupported by the medical and other evidence.” (*Id.*) The ALJ explained:

15 For example, it is inconsistent with the other medical opinions of record
 16 (see Exhibits 5A-6A; 6F) and it is over-restrictive, especially in light of
 17 light of reports showing no weakness or swelling (see Exhibit 1F, pp. 12,
 18 17) with no edema in the legs and a normal gait (see Exhibit 1F, p. 24).
 Furthermore, the record post Dr. Pancho’s opinion suggests conservative
 treatment and only minor symptoms, which are more consistent with the
 other medical opinions of record (see Exhibits 5A-6A; 6F).

19 (*Id.*)

20 The Ninth Circuit determined a medical opinion may be rejected when it is “unsupported by the
 21 record as a whole.” *Batson v. Comm’r of the Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2003);
 22 *see also Morgan v. Comm’r of the Soc. Sec. Admin.*, 169 F.3d 595, 602-03 (9th Cir. 1999). However,
 23 to do so, “[t]he ALJ must do more than offer his conclusions.” *Embrey v. Bowen*, 849 F.2d 418, 421-
 24 22 (9th Cir. 1988). This burden can be met by the ALJ identifying “conflicting clinical evidence” and
 25 making findings. *Swanson v. Secretary of Health & Hum. Servs.*, 763 F.2d 1061, 1065 (9th Cir.1985);
 26 *Magallanes*, 881 F.2d at 751. The ALJ carried this burden by identifying objective evidence that
 27 conflicted with the opinion of Dr. Pancho, including Plaintiff’s lack of weakness, her normal gait, and
 28 no swelling. (*See* Doc. 12-2 at 25.) Thus, the conflicts with the overall record is a specific and

1 legitimate reason to give little weight to the opinion of Dr. Pancho.

2 A conservative course of treatment is also a proper basis for discounting the restrictions
 3 identified by a physician. *Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir. 2001); *see also Phonn v.*
 4 *Astrue*, 2010 WL 2850768, at *2 (C.D. Cal. July 20, 2010) (the ALJ properly rejected the opinion of a
 5 treating physician rejected where it “could not be reconciled ... with the relatively conservative
 6 treatment that he had proscribed,” and the Court stated this was a “specific and legitimate reason” for
 7 discounting the opinion). Moreover, a condition that can be adequately controlled with medication and
 8 conservative treatment cannot be the basis of a claim for disability benefits. *See Warre v. Comm’r of*
 9 *the Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006) (“Impairments that can be controlled
 10 effectively with medication are not disabling for the purpose of determining eligibility for SSI
 11 benefits”). Thus, the ALJ set forth a specific, legitimate reason for giving less weight to the opinion of
 12 Dr. Pancho.³

13 Finally, to the extent Plaintiff asserts in her objections that Dr. Pancho’s opinion should not
 14 have been rejected because it is consistent with her subjective complaints, this argument is unavailing.
 15 The ALJ rejected Plaintiff’s subjective statements, and Plaintiff did not challenge the ALJ’s analysis
 16 regarding her subjective statements in the opening brief.

17 3. Substantial evidence supports the decision

18 The role of this Court is not to second guess the ALJ, or to reevaluate the evidence, but rather
 19 to determine whether the decision is supported by substantial evidence. *See Andrews v. Shalala*, 53
 20 F.3d 1035 (9th Cir. 1995) (indicating the Court should not second-guess “the ALJ’s resolution of
 21 conflicting medical testimony”). The term “substantial evidence” “describes a quality of evidence ...

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 23

 24 ³ Plaintiff contends that the ALJ was required to identify a more aggressive course of treatment available for
 25 Plaintiff prior to rejecting the limitations identified by Dr. Pancho due to the “conservative treatment.” (Doc. 26
 26 at 6-7.) However, the cases cited—and quoted—by Plaintiff plainly indicate that “[a] claimant cannot be
 27 discredited for failing to pursue non-conservative treatment options where none exist.” (*See id.*, quoting
 28 *Consuelo N. v. Kijakazi*, 2:21-cv-9115- MSS (C.D. Cal. Feb. 13, 2023) [emphasis added]); *see also Cindy F. v.*
Berryhill, 367 F. Supp. 3d 1195, 1210 (D. Or. 2019) (indicating “it would be illogical to discredit Plaintiff for
 failing to pursue non-conservative treatment options where none exist”) [emphasis added], quoting *Lapeirre-*
Gutt v. Astrue, 382 F. App’x 662, 664 (9th Cir. 2010)). Thus, Plaintiff’s reliance upon these cases—which
 address the credibility determinations, rather than evaluations of the weight given to medical opinions—is
 misplaced. Moreover, as the magistrate judge observed, “Plaintiff does not argue that her care was other than
 conservative.” (Doc. 24 at 8.)

1 intended to indicate that the evidence that is inconsistent with the opinion need not prove by a
2 preponderance that the opinion is wrong.” SSR 96-2p, 1996 WL 374188 at *3. “It need only be such
3 relevant evidence as a reasonable mind would accept as adequate to support a conclusion that is
4 contrary to the conclusion expressed in the medical opinion.” *Id.*

5 The opinion of an examining physician, such as Dr. Wagner, may be substantial evidence in
6 support of the ALJ’s decision when the opinion is based upon independent clinical findings. *Orn v.*
7 *Astrue*, 495 F.3d 625, 632 (9th Cir. 2007); *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001).
8 Dr. Wagner performed a comprehensive physical consultative examination of Plaintiff, including
9 testing her coordination, state, gait, range of motion in various joints, straight leg raising, motor
10 strength, senses, and reflexes. (Doc. 12-2 at 587-89.) Dr. Wanger also indicated that the limitations he
11 identified were “[b]ased on [his] objective findings on today’s exam.” (*Id.* at 589.) Because his
12 medical opinions—including that Plaintiff could lift and carry 50 pounds occasionally and 25 pounds
13 frequently—were based upon independent clinical findings, his opinion is substantial evidence in
14 support of the ALJ’s decision.

15 Likewise, the opinions of non-examining physicians, such as Dr. Laiken, may be substantial
16 evidence in support of an ALJ’s evaluation of the evidence. *Tonapetyan*, 242 F.3d at 1149 (the opinion
17 “of a non-examining medical expert ... may constitute substantial evidence when it is consistent with
18 other independent evidence in the record”); *see also* SSR 96-6p, 1996 WL 374180, *1. Dr. Laiken
19 reviewed the updated record and found Plaintiff could lift and carry 50 pounds occasionally and 25
20 pounds frequently, sit about six hours in an eight-hour day, and stand/walk about six hours in an eight-
21 hour workday. (Doc. 12-2 at 98-99.) Because this opinion is consistent with the independent evidence
22 from Dr. Wagner, it also constitutes substantial evidence in support of the ALJ’s decision.

23 **VI. Conclusion and Order**

24 According to 28 U.S.C. § 636(b)(1), this Court performed a *de novo* review of this case.
25 Having carefully reviewed the entire matter—including Plaintiff’s objections and Defendant’s
26 response—the Court concludes the Findings and Recommendations are supported by the record and
27 proper analysis. The administrative decision must be affirmed because substantial evidence supports
28 the findings. *See Sanchez v. Sec’y of Health & Human Serv.*, 812 F.2d 509, 510 (9th Cir. 1987).

Thus, the Court **ORDERS**:

1. The Findings and Recommendations (Doc. 24) are **ADOPTED**.
2. Plaintiff's appeal and request for remand (Doc. 18) are **DENIED**.
3. Defendant's request to affirm the administrative decision (Doc. 19) is **GRANTED**.
4. The Clerk of Court is directed to terminate any pending motions; enter judgment in favor of defendant Frank Bisignano, Commissioner of Social Security, and against Plaintiff Ana Her; and to close this case.

IT IS SO ORDERED.

Dated: **July 29, 2025**


UNITED STATES DISTRICT JUDGE